



**Minutes of the Government Records Council
January 7, 2020 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 p.m. by Mr. Christopher Huber at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Mr. Huber read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on January 2, 2020.”

Mr. Huber read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Commissioner Dr. Richard Lamont Repollet), Thurman Barnes (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member.

*****Ms. Berg and Mr. Ritardi participated telephonically.*****

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Brandon Garcia (Case Manager), and Deputy Attorney General Debra Allen.

Mr. Huber advised that copies of the agenda are available by the conference room door.

II. 2020 Officer Elections:

- Ms. Berg Tabakin suggested that 2020 Office Elections be tabled until the January 2020 meeting. Mr. Huber made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

III. 2020 Proposed Council Meeting Dates – Final Review (No Action Required)

IV. Executive Director’s Report:

OPRA Trainings

- The GRC is currently in the early stages of planning its 2020 training schedule and has already received several training requests.

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 5,337 Denial of Access Complaints. That averages about 305 annual complaints per 17 1/2 program years. So far in the current program year (FY2020), the GRC has received 132 Denial of Access Complaints.
 - The GRC is currently on pace to reduce its weekly open cases (approximately 413 should all agenda items move today) by nearly 100 complaints since the December 2018 meeting (511). It should also be noted that the GRC is will be within 100 closures of 5,000 completed complaints should all agenda items move today.
- 445 of the 5,337 complaints remain open and active (8.3%). Of those open cases:
 - 4 complaints are on appeal with the Appellate Division (0.9%);
 - 24 complaints are currently in mediation (5.4%);
 - 3 complaints are proposed for the Office of Administrative Law (0.7%);
 - 29 complaints await adjudication by the Office of Administrative Law (6.5%);
 - 84 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (18.9%);
 - 301 complaints are work in progress (67.6%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 31,543 total inquiries, averaging about 1,912 annual inquiries per 16 1/2 tracked program years (the GRC did not track inquiries in the agency’s first year). So far in the current program year (FY2020), the GRC has received 769 inquiries (6.6 inquiries per workday).

- Since Program Year 2011 (beginning July 1, 2010), 670 complaints were referred to mediation. Of those, 308 were settled in mediation, 339 were referred back to the GRC for adjudication, and 23 remain active in mediation.

V. Closed Session

- Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7) Legal Advice (N.J.S.A. 10:4-12(b)(7)).
- Michael Doss v. Borough of Bogota (Bergen) (2017-217) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)
- Krzysztof Golas v. Essex County Department of Corrections (2018-12) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)

Mr. Huber called for a motion to go into closed session. Mr. Barnes made a motion, and Berg Tabakin seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:42 p.m. until 2:07 p.m.

Mr. Huber called for a motion to end the closed session. Mr. Thurman made a motion, which was seconded by Ms. Berg Tabakin. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:08 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Huber, and Mr. Barnes. Mr. Ritardi participated in the portion of the closed session regarding GRC 2018-7 and left the meeting until after votes on all complaints from which he was recused were heard.

VI. Approval of Minutes of Previous Meetings:

November 12, 2019 Open Session Meeting Minutes

Mr. Huber called for a motion to approve the draft open session minutes of the November 12, 2019 meeting. Mr. Huber confirmed the accuracy of the draft minutes with Ms. Jennifer Simons, and Mr. Barnes also confirmed the accuracy of the draft minutes with Mr. Donald Palombi. Ms. Berg Tabakin made a motion, which was seconded by Mr. Branes. The motion passed by a majority vote.

November 12, 2019 Closed Session Meeting Minutes

Mr. Huber called for a motion to approve the draft closed session minutes of the November 12, 2019 meeting. Mr. Huber confirmed the accuracy of the draft minutes with Ms. Jennifer Simons, and Mr. Barnes also confirmed the accuracy of the draft minutes with Mr. Donald Palombi. Ms. Berg Tabakin made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote.

VII. New Business – Cases Scheduled for Adjudication

Mr. Huber stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The reason for the Administrative Disposition is under each complaint below:

- A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None**
- B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None**
- C. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):**
 - 1. **John Gentless v. Borough of Stratford (Camden) (2018-85)**
 - Complaint Voluntarily Withdrawn.
 - 2. **John Gentless v. Borough of Stratford (Camden) (2018-128)**
 - Complaint Voluntarily Withdrawn.
 - 3. **Fran Brooks v. Tabernacle Township (Burlington) (2019-81)**
 - Complaint Settled in Mediation.
 - 4. **David Weiner v. Newark Housing Authority (Essex) (2019-86)**
 - Complaint Voluntarily Withdrawn.
 - 5. **Jerald D. Albrecht v. Middlesex County Sheriff’s Office (2019-121)**
 - Complaint Settled in Mediation.
 - 6. **David Weiner v. County of Essex) (2019-133)**
 - Complaint Settled in Mediation.
 - 7. **James D’Andrea v. NJ Civil Service Commission (2019-139)**
 - Complaint Voluntarily Withdrawn.
 - 8. **Victor Russ v. NJ State Parole Board (2019-140)**
 - Complaint Settled in Mediation.
 - 9. **C.D. (o/b/o J.K.) v. Mt. Ephraim Board of Education (Camden) (2019-203)**
 - Complaint Voluntarily Withdrawn

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A brief summary of the Executive Director’s recommended action is under each complaint:

- 1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-192) (SR Recusal)**
 - This complaint should be dismissed because Complainant’s Counsel withdrew it in a letter to the Office of Administrative Law dated November 19, 2019.
 - Mr. Huber called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Michael Doss v. Borough of Bogota (Bergen) (2017-217) (SR Recusal)**
 - The Custodian complied with the Council's September 24, 2019 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully redacted the responsive invoices.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Krzysztof Golas v. Essex County Department of Corrections (2018-12) (SR Recusal)**
 - The current Custodian complied with the Council's September 24, 2019 Interim Order.
 - The current Custodian shall comply with the *In Camera* Examination Findings.
 - The current Custodian shall disclose all other portions of the responsive e-mails as prescribed in Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Darren Nance v. City of Newark (Essex) (2018-49) (SR Recusal)**
 - The Custodian's failure to respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-326 (February 2013).
 - The Custodian lawfully denied access to the payment vouchers and authorizations responsive to OPRA request item No. 1 pursuant to a "Consent Confidentiality/Protective Order." N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the legal services invoices sought in OPRA request item No. 2 because none existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Suellen McCaulley v. City of Hoboken (Hudson) (2018-71) (SR Recusal)**
 - The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

6. **Shawn Custis v. Essex County Prosecutor's Office (2018-76) (SR Recusal)**
 - The Custodian lawfully denied access to the requested criminal record histories. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963); Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

7. **Suellen McCaulley v. County of Hudson (2018-107) (SR Recusal)**
 - The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Mark L. Tompkins v. Essex County Prosecutor's Office (2018-116) (SR Recusal)**
 - The Custodian bore her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The requested records are exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017).
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-365)**
 - This complaint should be dismissed because Complainant's Counsel withdrew it in a letter to the Office of Administrative Law dated November 19, 2019.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

2. **Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)**
 - The current Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

3. **Shamsiddin Abdur-Raheem v. NJ State Police (2016-291)**
 - The Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

4. **James Mullin v. Bergen County Sheriff's Office (2017-102)**
 - The Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

5. **Charles Richards v. Florence Township Police Department (2017-219)**
 - The Custodian did not fully comply with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to

accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

6. **Antonne Henshaw v. NJ Department of Corrections (2017-235)**

- The Custodian complied with the Council's November 12, 2019 Interim Order.
- There is no knowing and willful violation
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

7. **Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)**

- The Council should table this complaint for further review.
- Mr. Huber called for a motion to have the above matter tabled. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

8. **Gregory Gibbs v. Atlantic County Prosecutor's Office (2018-14)**

- The Complainant request item No. 4 was invalid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
- The Custodian may have unlawfully denied access to arrest reports responsive to OPRA request item No. 1. Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). The Custodian must either disclose responsive reports or certify if none exist.
- The Custodian lawfully denied access to the portions of OPRA request item Nos. 1 through 3 seeking pre-trial memoranda, investigative reports, handwritten notes, police reports, dispatch notes, and walkie talkie reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541.
- The Custodian lawfully denied access to the portion of OPRA request item No. 2 seeking photo arrays under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

9. **Mark Demitroff v. Buena Vista Township (Atlantic) (2018-27)**

- The Complainant's request seeking "access to . . . [a] Facebook page" is invalid as a blanket request that failed to identify specific records. MAG, 375 N.J. Super.

534; Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011). Thus, the Custodian lawfully denied access to it and the GRC does not address any remaining arguments.

- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

10. **William D. Huysers v. NJ Department of Corrections (2018-38)**

- The Custodian lawfully denied access to the requested Special Investigation Division reports. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(2); Cordero v. N.J. Dep't of Corr., GRC Complaint No. 2012-209 (June 2013).
- The Custodian lawfully denied access to the requested surveillance footage. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14); Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016).
- The Custodian lawfully denied access to the requested police and lab reports because none existed. Pusterhofer, GRC 2005-49.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Brian Riback v. Township of Mahwah (Bergen) (2018-41)**

- The Custodian's failure to respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian lawfully denied access to the withheld letter responsive to the Complainant's February 21, 2018 OPRA request under the personnel exemption. N.J.S.A. 47:1A-10; McGee v. Twp. of East Amwell, 416 N.J. Super. 602 (App. Div. 2010).
- The Custodian may have unlawfully denied access to records responsive to the Complainant's February 23, 2018 OPRA request. The Custodian must either locate and disclose same or certify if none exist.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Lawrence Thomas v. Bergen County Prosecutor's Office (2018-44)**

- The Custodian lawfully denied access to the responsive lab reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.

- Mr. Huber called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. Jose M. Cortes v. Camden County Prosecutor’s Office (2018-51)

- The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
- Mr. Huber called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. Aswad Ayinde v. Passaic County Prosecutor’s Office (2018-52)

- The portion of the Complainant’s request seeking “data basis” is invalid. MAG, 375 N.J. Super. 534; Franklin v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-308 (August 2018).
- The portion of the Complainant’s request seeking DNA and saliva samples is also invalid. Miller v. N.J. Dep’t of Corr., GRC Complaint No. 2009-226 (October 2010).
- The portion of the Complainant’s request seeking e-mails was invalid. Elcavage, GRC 2007-07.
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking arrest and investigatory reports under N.J.S.A. 47:1A-9(a) and N.J.S.A. 2A:82-45.
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking handwritten notes under the criminal investigatory exemption. N. Jersey Media Grp., Inc., 229 N.J. 541; Boretsky v. Middlesex Cnty. Prosecutor’s Office, GRC Complaint No. 2016-220 (February 2018).
- The Custodian lawfully denied access to the remainder of the Complainant’s OPRA request because no responsive records existed. Pusterhofer, GRC 2005-49.
- Mr. Huber called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. Luis F. Rodriguez v. Kean University (2018-53)

- The Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn, GRC 2011-326.
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director’s findings and recommendations as written. Mr.

Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. Dolores Rebecky v. Borough of Wallington (Bergen) (2018-55)

- The Custodian's failure to respond immediately to the Complainant's OPRA request resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005).
- The Custodian's response was insufficient because he failed to provide a specific extension date. N.J.S.A. 47:1A-5(i); Hardwick v. N.J. Dep't of Trans., GRC Complaint No. 2007-164 (February 2008).
- The Custodian did not unlawfully deny access to the responsive records based on the sufficiency of the disclosed records' content. Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2018-74)

- The Council must conduct an *in camera* review of the disclosed record to determine the validity of the Custodian's assertions that the redactions are proper under the personnel and attorney-client privilege exemptions. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Ms. Berg Tabakin seconded the motion. The motion passed by a unanimous vote.

18. Edward W. Bray v. County of Salem (2018-95)

- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- There is no knowing and willful violation.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. Sean P. Sullivan v. NJ Department of Treasury (2018-119)

- Based on unwarranted and unsubstantiated extensions, the Custodian did not timely respond to the Complainant's OPRA request, thus resulting in a "deemed" denial. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See Ciccarone v. State of

N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).

- The instant complaint is ripe for adjudication and not moot.
- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking complaints and any related documents because none exist. Pusterhofer, GRC 2005-49.
- The Custodian must submit a detailed document index to the GRC identifying all responsive records, whether they were provided in part or whole, and the lawful basis for denying access. Upon receipt of the document index, the Complainant shall have five (5) business days to refute the index via legal certification.
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

20. **Kim E. Davis v. Township of Deptford (Gloucester) (2018-131)**

- The Custodian lawfully denied access to the Complainant's June 14, 2018 OPRA request seeking denial correspondence because none existed. Pusterhofer, GRC 2005-49.
- The Complainant's cause of action as it related to the June 26, 2018 OPRA request was unripe for adjudication. Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-343 (February 2013).
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

21. **Russell Smith v. Moorestown Township (Burlington) (2018-138)**

- The Custodian bore her burden of proving that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian's response was insufficient because she failed to address each request item individually. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The Council must conduct an *in camera* review of the responsive records to determine the validity of the Custodian's assertions that they were exempt under the inter-agency or intra-agency advisory, consultative, or deliberative material exemption. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The knowing and willful analysis is deferred.
- Mr. Huber called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Huber called for a motion to accept the Executive Director's findings and recommendations as written. Mr.

Barnes made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal:

- Carter v. N.J. Dep't of Cmty. Affairs, 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. 2019): The Appellate Division affirmed the GRC finding that the Complainant's request seeking notices from the Appellate Division for appeals of Local Finance Board decisions pertaining to violations of N.J.S.A. 40A:9-22.9 over a five (5) year period was invalid as overly broad. The court held that the request would require the Custodian to manually locate and review each case file to identify and compile responsive records, going beyond OPRA's requirements. Additionally, the court held that the Complainant's reliance on N.J.A.C. 1:1-4.1 to claim that his matter should have been adjudicated within thirty (30) days of receipt was misplaced, as the circumstances did not meet the definition of a "contested case" under N.J.A.C. 1:1-2.1. Lastly, the court found that the GRC did not act in bad faith regarding the delay between when the matter was filed and the date of adjudication and held that the GRC's procedure of addressing complaints in the order received was established and was not arbitrary, capricious, or unreasonable.

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

X. Public Comment: None

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Huber made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

The meeting adjourned at 2:37 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: February 26, 2020